

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

IN THE MATTER OF:

**Challenge, Inc.,

(Respondent)**

PHMSA Case No. 08-0075-SD-CE

COMPROMISE ORDER

I. Summary

Respondent: Challenge, Inc
 7950 Georgetown Road, Suite 200
 Indianapolis, Indiana 46268
 ATTN: Angela Sparks

No. of Violations: 6

Maximum Possible
Civil Penalty: \$300,000

Total Payment Due: \$3,500

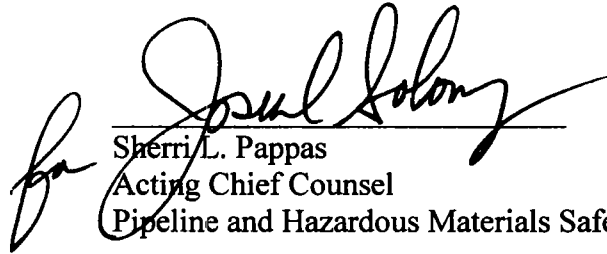
II. Finding

This matter comes before me after Challenge, Inc. (Respondent) and the Pipeline and Hazardous Materials Safety Administration agreed to a disposition of this case. I find Respondent committed the violations described in the Compromise Agreement (Agreement), which I have attached hereto. I have reviewed the Agreement and I find that the terms as outlined therein are in the best interest of justice. The Agreement, in its entirety, is incorporated and attached to this Order. All of the terms and conditions of the Agreement shall be given the full force and effect of an Order issued pursuant to the

DEPT OF TRANSPORTATION
PHMSA
08-0075-SD-CE

Federal hazardous materials transportation law, 49 U.S.C. § 5101, et seq., or the
Hazardous Materials Regulations, 49 C.F.R. Parts 171 – 180.

It is so Ordered,



Sherri L. Pappas
Acting Chief Counsel
Pipeline and Hazardous Materials Safety Administration

Date: 2/26/09

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the _____ day of FEB 26 ²⁰⁰⁹, 2009, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Challenge, Inc
7950 Georgetown Road, Suite 200
Indianapolis, Indiana 46268
ATTN: Angela Sparks

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

Ryan Posten, Director
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 02590

One Copy (without enclosures)
Via Electronic Mail

Kevin W. Boehne, Chief
Pipeline and Hazardous Materials Safety Administration
Central Region Office, PHH-43
2300 Devon
West Trenton, New Jersey 08628

One Copy (without enclosures)
Via Electronic Mail

Shawn C. Wolsey, Attorney
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E.
PHC-10, E26-303
Washington, D.C. 20590

One Copy
Personal Delivery

U.S. DOT Dockets
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Room W12-140
Washington, D.C. 20590

One Copy
Personal Delivery

Ted Wilke, Associate Administrator
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

One Copy (without
enclosures)
Via Electronic Mail

Bob Richard, Deputy Associate Administrator
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

One Copy (without
enclosures)
Via Electronic Mail

Tonya Schreiber, Executive Director
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

One Copy (without
enclosures)
Via Electronic Mail

FEB 26 2009

A handwritten signature in black ink, appearing to be 'Willard Walker', written over a horizontal line.

Willard Walker

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

IN THE MATTER OF:

**Challenge, Inc.,

(Respondent)**

PHMSA Case No. 08-0075-SD-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Challenge, Inc. ("Respondent"), a distributor of both bulk and non-bulk quantities of hazardous and non-hazardous materials, located in Indianapolis, Indiana,

and

The Pipeline and Hazardous Materials Safety Administration ("PHMSA"), a modal Administration of the United States Department of Transportation.

II. Authority/Jurisdiction

A. The Parties enter into this agreement under authority of 49 U.S.C. § 5123(e) and 49 C.F.R. § 107.327(a)(1).

B. For the Purposes of this Agreement, Respondent acknowledges:

(1) As a person who ships certain chemicals and other hazardous materials, Respondent is a regulated entity subject to the Hazardous Materials Regulations (HMR) and to the jurisdiction of (a) the Secretary of Transportation, (b) the PHMSA's Associate Administrator for Hazardous Materials Safety, and (c) PHMSA's Office of Chief Counsel (49 U.S.C. § 5103(b) and 49 C.F.R. § 107.301); and

(2) Although the parties have agreed to a compromise of this proceeding, such compromise does not constitute an admission on the part of the Respondent that it committed the alleged violations found by PHMSA and/or an agreement with the facts alleged by PHMSA; PHMSA has sufficient proof to show, by a preponderance of the

evidence, Respondent's violation of the Federal regulations listed in Section V below;
and

- (3) Respondent received proper notice of PHMSA's actions in the proceeding.

III. Background

A. On November 14, 2007, an Investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a compliance inspection at Respondent's facility, located in Indianapolis, Indiana, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's inspector reported six (6) alleged violations of the HMR. On or about November 14, 2007, after the conclusion of the compliance inspection, PHMSA's Investigator contacted and interviewed the Respondent, and then conducted an "exit briefing" during which the inspector discussed the alleged violations and the required corrective actions with Respondent's representative.

B. Upon completion of the compliance inspection, the inspector submitted a report to the chief of OHME's Central Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Chief referred the matter to PHMSA's Assistant Chief Counsel for Hazardous Materials Safety thereby recommending the initiation of a civil penalty action against Respondent pursuant to 49 C.F.R. § 107.311.

C. Based on a preliminary assessment of the apparent nature, circumstances, extent, and gravity of the probable violations, as set forth in the inspector's report, on December 12, 2008, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging six violations of the HMR and proposing a \$12,500 civil penalty, which included a \$0 reduction for corrective actions taken by Respondent, plus one quality control item.

IV. Basis of Agreement

A. Reply to Notice. On December 16, 2008, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In letters dated December 16, 2008 and December 7, 2007, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective Action
1	Respondent provided evidence that training records are compliant with the requirements of the HMR and provided a training class certificate dated 1/30/08.

2	Respondent advised that they had obtained a new DOT approved Jerrican which has the same bungs as the drums and Respondent also obtained new bung wrenches. Respondent provided photographs of the new Jerrican and the bung wrenches. Finally, Respondent assembled a binder with closure instructions that is maintained in the lab. Respondent provided photographs of the binder.
3	Respondent advised "new drums will be used going forward" which they supply to their customers.
4	Respondent described their new procedure for retesting IBCs with 3 safety checks to ensure that IBC's in need of retest are retested. Respondent provided copies of the Tote Inspection Reports.
5	Respondent advised that they have rewritten their security plan to make it more specific to their business.
6	Respondent provided a copy of the retest report for 31H2 intermediate bulk container with serial number 49432.

PHMSA finds that the foregoing corrective actions have corrected the violations outlined in the Notice and no further corrective actions are required.

C. Finances. Respondent has requested mitigation based on finances.

D. Informal Conference. An informal conference was conducted on January 16, 2009. Respondent's corrective actions were discussed in detail.

V. Compromise Penalty Amount

Viol. No.	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Offering for transportation in commerce a hazardous material, Compounds, cleaning liquid, (phosphoric acid, nitric acid), 8, NA 1760, PG III, while allowing an employee to perform a function subject to the requirements of the hazardous materials regulations (HMR), when records of hazmat training were not created and retained, in violation of 49 CFR §§ 171.2(a) & (b), 172.702(a), 172.704(a), 172.704 (c) and 172.704(d)(4-5).	\$500	\$500
2	Offering for transportation in commerce, a hazardous material, "Clean N Coat" a Compounds, cleaning liquid, (phosphoric acid, nitric acid), 8, NA 1760, PGIII in a UN certified 55-gallon drum, marked UN 1A1 and "Healthy Hooves" a Compounds, cleaning liquid, (sulfuric acid, phosphoric acid), 8, NA 1760, PG III, in a UN	\$2,500	\$1,000

	certified 5-gallon plastic pail, marked 1112, when the drums and pails had not been closed in accordance with the manufacturer's closure notification, in violation of 49 CFR §§ 171.2(a),(b),(c) & (g), 173.22(a)(4), 173.24(i)(2), and 178.601(b).		
3	Offering for transportation in commerce a hazardous material, Potassium hydroxide solution, 8, UN1814, II, in reusable plastic drums, when the drums were not authorized to be used for this material because the drums had not been subjected to leakproofness tests before reuse, in violation of 49 C.F.R. §§ 171.2(a),(b),(c) & (g), 173.28(b)(1) and 173.28(b)(2).	\$5,000	\$1,000
4	Filling and offering for transportation in commerce a hazardous material, Compounds, cleaning liquid (phosphoric acid), 8, NA 1760, III, in a UN specification 31H2 intermediate bulk container, for which a test or inspection was required, that had not been subjected to periodic inspection and retesting, violation of 49 C.F.R. §§171.2(a),(b), (e) & (g), 180.352(a), and 180.352(b)(1) through (3).	\$3,500	\$1,000
5	Offering for transportation in commerce a placardable quantity of a hazardous material, 3,293 pounds of Compounds, cleaning liquid (phosphoric acid), 8, NA1760, III, when a risk assessment and security plan had not been developed and implemented, in violation of 49 C.F.R. §§ 171.2(a) & (b), 172.800(a) and (b) and 172.802(a).	QC	QC
6	Failing to maintain a copy of an inspection or retest report for an intermediate bulk container, in violation of 49 C.F.R. §§ 171.2(a) & (b), and 180.352(g)(1) through (3).	\$1,000	Merged into Violation 4
TOTAL		\$12,500	\$3,500

VI. Factors Considered in Determining the Civil Penalty

In determining the amount of a civil penalty, PIIMSA considered the following statutory criteria (49 U.S.C. § 5123(c)):

- (1) The nature, circumstances, extent, and gravity of the violation;
- (2) The degree of culpability and history of prior violations;
- (3) Respondent's size;
- (4) Respondent's ability to pay the penalty and its ability to continue to do business;
- and
- (5) Other matters as justice may require.

Documentation of Respondent's corrective actions for these violations justifies assessing a civil penalty of \$3,500.

VII. Terms and Conditions

A. Payment. Respondent agrees to pay the sum of \$3,500, as full satisfaction of civil penalty proposed in the Notice in seven (7) monthly payments of \$500 each.

(1) Respondent must pay the first \$500 of the payment plan within thirty days of the date of the Compromise Order.

(2) Respondent must pay an additional \$500 each thirty days after that until the entire amount is paid

B. Deferment/Abeyance. Contingent upon Respondent meeting certain conditions, PHMSA shall hold \$9,000 of the assessed civil penalty in abeyance. PHMSA shall consider the \$9,000 deferred and held in abeyance for a period of one (1) year following the issuance of a FINAL ORDER in this matter. This abeyance/deferment is contingent upon Respondent's full compliance with the following:

(a) Respondent is to fully cooperate with PHMSA's investigators, who will perform an unannounced re-inspection of Respondent's facility at some time during the abeyance/deferment period;

(b) Respondent may not be found in violation of the same or substantially similar violations of the HMR, as cited in the NOPV; and

(c) Respondent must pay the portion of the civil penalty not held in abeyance as specified in this Agreement. Failure to comply with payment terms is considered a breach of the abeyance agreement.

C. Affect of a Breach of an Abeyance Condition. Should Respondent breach the condition(s) of the abeyance agreement, the Assistant Chief Counsel for Hazardous Materials Safety, in its sole discretion, may impose the entire amount, or any portion, of the civil penalty herein identified as deferred or held in abeyance. Furthermore, should PHMSA reinstate any portion thereof, or the entire civil penalty held in abeyance, Respondent may request payment terms; but, PHMSA retains full

D. By entering into this agreement, Respondent waives any right:

(1) to present further written or oral explanations, information, and arguments in this matter;

(2) to Administrative appeal; and

(3) to seek judicial review or otherwise contest or challenge the validity of this Agreement or the NOPV associated with this case.

E. This Agreement resolves only the violations noted in PHMSA Case No. 08-0075-SD-CE as referenced in Section V of this agreement and in the NOPV. In the event Respondent commits any future violations of the Federal Hazardous Material Transportation Law, 49 U.S.C. § 5101 *et seq.*, the HMR, or any exemption, or order issued thereunder this violation shall constitute a prior violation under 49 U.S.C. § 5123.

F. After Respondent signs and returns this Agreement, PHMSA's representative will present the Agreement to the Chief Counsel requesting that the Chief Counsel adopt the terms of this Agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of this Agreement constitute an offer of compromise until accepted by the Chief Counsel.

G. After issuance of the Compromise Order, Respondent must pay the civil penalty in accordance with the terms of this Agreement. Upon receipt of Respondent's final payment, the Chief Counsel will close this case with prejudice to the Respondent (49 C.F.R. § 107.327(a)(1)(ii)).

VIII. Miscellaneous Provisions

A. By signing this Agreement, Respondent or its representative warrants to have read the agreement and understood its terms and conditions.

B. The individuals signing on behalf of the Respondent and PHMSA represent that they are authorized to sign and have authority to enter into this Agreement.

C. Respondent's failure to sign and return this agreement within thirty (30) days from its receipt will result in the withdrawal of this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d).

D. Respondent must return the signed Agreement to:

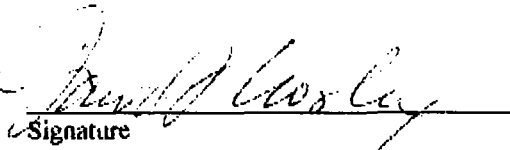
Shawn C. Wolsey,
Office of the Chief Counsel
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
PHC-10, E26-202
Washington, D.C. 20590-0001

Respondent

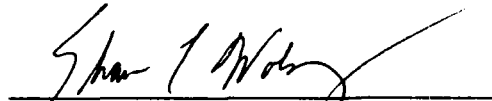
Federal Tax ID Number¹: 35-1326199

¹ The Taxpayer Identifying Number is required by 31 U.S.C. § 7701(c)(3). PHMSA will use this number for purposes of collecting and reporting on any delinquent amounts arising out of this agreement.

By:


SignatureDate: 2/20/09David E. Crowley
Printed Name, Title**Pipeline and Hazardous Materials Safety Administration**

By:


Shawn C. Wolsey, Attorney-AdvisorDate: 2/23/09

ADDENDUM A

Payment Information

Respondent must pay a total civil penalty of **\$3,500** in accordance with the following:

Due date

Respondent must pay the first \$500 of the payment plan within 30 days of the date of the ORDER. Respondent must pay an additional \$500 each 30 days thereafter until the entire amount is paid. If Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date that the first installment is due.

Payment Method

Respondent must pay the civil penalty by one of the following: (1) wire transfer, (2) certified check or money order, or (3) credit card via the Internet.

(1) Wire Transfer.

Detailed instructions for sending a wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury are contained in the enclosure to this Order. Please direct questions concerning wire transfers to:

Financial Operations Division
Attn: Linda Lavalle
Federal Aviation Administration
Mike Monroney Aeronautical Center
AMZ-341
P.O. Box 269039
Oklahoma City, OK 73125
Telephone (405) 954-8893.

(2) Check or Money Order.

Make check or money order payable to "U.S. Department of Transportation" (include the Ref. No. of this case on the check or money order) and send to:
Chief, Financial Operations Division
Attn: Linda Lavalle
Federal Aviation Administration
Mike Monroney Aeronautical Center
AMZ-341

P.O. Box 269039
Oklahoma City, OK 73125.

(3) Credit Card.

To pay electronically using a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/paygov/>

Interest and Administrative Charges

If Respondent pays the civil penalty by the due date, no interest will be charged. If Respondent does not pay by that date, the FAA's Financial Operations Division will start collection activities and may assess interest, a late-payment penalty, and administrative charges under 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 49 C.F.R. § 89.23.

The rate of interest is determined under the above authorities. Interest accrues from the date of this Order. A late-payment penalty of six percent (6%) per year applies to any portion of the debt that is more than 90 days past due. The late-payment penalty is calculated from the date Respondent receives the Order.

Treasury Department Collection

FAA's Financial Operations Division may also refer this debt and associated charges to the U.S. Department of Treasury for collection. The Department of the Treasury may offset these amounts against any payment due Respondent (31 C.F.R. § 901.3).

Under the Debt Collection Act (see 31 U.S.C. § 3716(a)), a debtor has certain procedural rights prior to an offset. You, as the debtor, have the right to be notified of: (1) the nature and amount of the debt; (2) the agency's intention to collect the debt by offset; (3) the right to inspect and copy the agency records pertaining to the debt; (4) the right to request a review within the agency of the indebtedness and (5) the right to enter into a written agreement with the agency to repay the debt. This Order constitutes written notification of these procedural rights.

**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION**

1. <u>RECEIVER'S ABA NO.</u> 021030004	2. <u>TYPE SUBTYPE</u> (provided by sending bank)
3. <u>SENDING BANK ABA NO.</u> (provided by sending bank)	4. <u>SENDING BANK REF NO.</u> (provided by sending bank)
5. <u>AMOUNT</u>	6. <u>SENDING BANK NAME</u> (provided by sending bank)
7. <u>RECEIVER NAME:</u> TREAS NYC	8. <u>PRODUCT CODE</u> (Normally CTR, or sending bank)
9. <u>BENEFICIAL (BNF)- AGENCY LOCATION CODE</u> BNF=/AC-69140001	10. <u>REASONS FOR PAYMENT</u> <i>Example: PHMSA Payment for Case #/Ticket</i>

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this nine digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE:** **\$10,000.00**

Block #7 - RECEIVER NAME- "TREAS NYC." Ensure the sending bank enters this abbreviation, which must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/AC-69140001" Ensure the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #10 - REASON FOR PAYMENT - "AC-Payment for PHMSA Case#" To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number."

Note: - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer, the General Accounting Division at (405) 954-8893.

FAX TRANSMISSION

CHALLENGE INC.

7950 GEORGETOWN RD, SUITE 200
INDIANAPOLIS, IN 46268
(317) 875-5068
Fax: (317) 876-1103

To: Mr. Shawn Wolsey Date: 2/23/2009
Fax #: 202-366-7041 Pages: 11, including this cover sheet
From: Angela Sparks
Subject: Compromise Agreement

Comments:

Shawn,

The Compromise Agreement will be
going in the mail today.

Sorry for the delay

Sincerely,

Angela Sparks